

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6188

PETITION OF JOHN R. CROOK
(Hearing held February 21, 2007)

OPINION OF THE BOARD
(Effective date of Opinion, June 4, 2007)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.326(a)(1). The petitioner proposes the construction of an accessory structure/swimming pool in the side yard. Section 59-C-1.326(a)(1) requires accessory structures to be located in the rear yard only.

Jay Schreiber of Maryland Pools appeared with the petitioner at the public hearing.

The subject property is Lot P2, Block 8, Fawsett Farm Subdivision, located at 10610 Belfast Place, Potomac, Maryland, 20854, in the R-200 Zone (Tax Account No. 00867930).

Decision of the Board: Requested variance **denied.**

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 18 x 40 foot accessory structure/swimming pool in the southwest section of the subject property.
2. The petitioner testified that the house was built in the 1940s or 1950s and that the siting of the house constrains new construction on the lot. The petitioner testified that the topography in one side yard slopes upward and that the topography in the other side yard slopes downward. The petitioner testified that the topography in the rear yard drops 4-5 feet. The petitioner testified that the property's septic system also restricts new construction on the lot and that locating the new construction elsewhere on the lot would require the removal of the existing trees.

3. The petitioner testified that he was advised that the pool must be located at least 15 feet from the foundation of the house. The petitioner testified that the requirements of the zoning ordinance would result in siting the pool on a narrow strip of land and that the proposed location of the pool will be further away from the most impacted neighbor. The petitioner testified that the subject property is 45,923 square feet. See Exhibit No. 4 [site plan].
4. Mr. Schreiber testified that the installation of the pool in the petitioner's rear yard would require that retaining walls be built and that grading out the area behind the house would be difficult, if not impossible to place a pool in that area.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioner's lot has no exceptional topographical or other extraordinary conditions that are peculiar to the subject property. The Board finds that for purposes of evaluating a petition for a variance that uniqueness or peculiarity of a property does not refer to the extent of the improvements on the property or the location of the house. *Chester Haven Beach Partnership v. Board of Appeals for Queen Anne's County*, 103 Md. App. 324, 653 A.2d 532 (1995).

The Board notes that the subject property is twice the minimum lot size for the zone.

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance to permit the construction of an accessory structure/swimming pool in the side yard is denied.

The Board adopted the following Resolution:

On a motion by Caryn L. Hines, seconded by Catherine L. Titus, with Donna L. Barron, Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 4th day of June, 2007.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.